

Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NORTHWEST EARTHMOVERS,
INC., an Oregon corporation,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for The
Bank of Clark County,

Defendant.

Case No. C09-5795-RBL

STIPULATED MOTION TO ALLOW
AMENDMENT AND TO STAY CASE

**NOTE ON MOTION CALENDAR:
Wednesday, April 7, 2010**

I. STIPULATION AND MOTION

The parties, through their undersigned counsel, hereby stipulate as follows:

1. Defendant Federal Deposit Insurance Corporation in its capacity as Receiver for the Bank of Clark County ("FDIC") has moved to dismiss the complaint of plaintiff Northwest Earthmovers, Inc. ("NEI") for lack of subject matter jurisdiction and/or abstention. Dkt. No. 9. That motion is currently noted for consideration on April 23, 2010, and the Court has abrogated the case schedule while that motion is pending. Dkt. No. 11.

2. The parties have discussed how to resolve this matter most efficiently, and agree as follows.

3. The FDIC hereby withdraws its pending Motion to Dismiss [Dkt. No. 9], without prejudice to refile that motion or a similar motion if necessary. NEI agrees not to object to such new filing if it becomes necessary as discussed below.

4. On or before April 19, 2010, plaintiff shall file an amended complaint. The FDIC agrees not to object to or oppose the filing of such amended complaint.

5. Upon the filing of that amended complaint, the parties jointly request that this action be stayed in its entirety, but not dismissed, to allow plaintiff to continue to pursue its remedies in the pending state law construction lien foreclosure in Clackamas County (Oregon) Circuit Court entitled *Northwest Earthmovers, Inc. v. M.B. Custom Homes and Development, et al.*, Case No. CV09040306 (the "Foreclosure Action").

6. The FDIC believes that the resolution of the Foreclosure Action will render this action moot. Plaintiff NEI agrees that may be the outcome, but is not certain of that yet, and so wants the Court to stay, but not dismiss, the case at this juncture.

7. The parties agree to file with the Court regular status reports regarding the status of Foreclosure Action, and the remaining need for this action. The parties propose that the first such status report be filed in one year, and subsequent reports be filed every six months thereafter or as the Court may otherwise order.

8. Upon thirty (30) days written notice to the opposing party, either party may move to have the stay lifted

9. Except as otherwise noted, this stipulation is without prejudice to the rights, claims or defenses of either party.

1 So Stipulated this 7th day of April, 2010.

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3 TONGUE, LLP

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4 *s/William R. Joseph*

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II. ORDER

Based upon the above stipulation, IT IS SO ORDERED that (1) the FDIC's motion to dismiss [Dkt. No. 9] is hereby taken off the docket; (2) plaintiff NEI may file an amended complaint on or before April 19, 2010; and (3) thereafter, this matter will be stayed, but not dismissed.

It is further ORDERED that the parties shall submit a joint status report on or before April 19, 2011, which report shall inform the Court regarding the status of the Foreclosure Action and the continued need for this action. The parties shall submit similar status reports every six (6) months thereafter. If at any time, the resolution of the Foreclosure Action has rendered this action moot or unnecessary, the parties shall so inform the Court as soon as possible so that this action may be dismissed.

Either party may move to resume this action; however, the moving party shall provide written notice to the opposing party of its intent to so move at least thirty (30) days prior to filing and serving any such motion.

SO ORDERED this 8th day of April, 2010.


RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE